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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,265	09/15/2003	Angelo V. Cuomo .	33171-2020	9027

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EXAMINER

FIDEI, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/662,265	CUOMO, ANGELO V.	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-8,11-14 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,6,7 and 11-14 is/are allowed.
- 6) ☒ Claim(s) 8 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because reference numerals are crossed out several times, see figure 16 with some numerals crossed over as in figure 21. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is incomplete because there is no claim from which it depends.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plummer (US Patent no. 2,405,517) in view of Korte (US Patent no. 2,026,525). Plummer discloses a foldable carrier with a pair of central panels 5 capable of being folded as shown in figures 1 and 2 where receptacles 6 are outwardly of one panel. The central panels are hinged at the location of handle 11. The difference between the claimed subject matter and Plummer resides graphics provided on at least one of the inside surfaces of the central panels.

Korte suggests the desirability of providing printed matter as in advertisement on receptacle carriers. It would have been obvious to one of ordinary skill in the art to modify the carrier of Plummer by constructing graphics in the form of printed matter as taught by Korte, in order to provide advertisements or promotions.

The location of the printed matter on the foldable carrier of Plummer is of no patentable weight.

In order for such “printed matter” to distinguish the invention from prior art, in terms of patentability, the printed matter must be functionally related to the substrate in order to be entitled patentable weight.ⁱ In the present case the specific graphics does not interrelate the package with the specific graphics in the way the indicia interrelated with the band of Gulack’s invention. Adopting applicant’s position (for patentability), anyone could continue patenting a product indefinitely provided that they added different graphics, advertisement, or indicia to the package. All the specific graphics, or printed matter, does is teach a different use of an existing product. Accordingly, the printed matter is of no patentable distinction.ⁱⁱ

Allowable Subject Matter

6. Claim 1, 3, 4, 6, 7 and 11-14 allowed.

Response to Arguments

7. Applicant's arguments filed June 19, 2006 have been fully considered but they are not persuasive. Applicant takes issue with the carrier for bottles and other articles of Plummer having a center panels as claimed. In so far as applicant is able to discern the panels referenced by the Examiner is simply incorrect in the holding of equivalence because "as far can be told the panels 5 are simply formed from a single pieces of cloth", page 40 of applicant's remarks. So? Does not Applicant form the carrier from a single piece of material also? It is not seen what this has to do with the claimed subject matter provided by Applicant's disclosure.

As the Federal Circuit has observed, "the name of the game is the claim," *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529(Fed. Cir. 1998). A finished carrier is all that Applicant sets forth with a pair of central panels. When comparing the claim 21 to Plummer is would be abundantly clear to the skilled artisan a pair of central panels result in the "finished carrier". In fact Plummer column 2, lines 26-30 states as much because the carrier bends about the handle to double up the center. In fact Plummer himself describes his carrier as be folded up in column 1, line 18. Accordingly, the arguments in this regard are not persuasive.

With regards to Applicant's dicta that fabric cloth is not suitable for printing they should provide evidence indicating such. Examples of textile cloth fabric printed with graphics is so prevalent that the statement is not understood. Absent any evidence showing the carrier of Plummer can not be printed with graphics, the rejection has been maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 3728

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David T. Fidei
Primary Examiner
Art Unit 3728

dtf
October 28, 2006

ⁱ In re Gulack, 217 USPQ 410 (CAFC 1983)

ⁱⁱ In re John Ngai and David Lin (CAFC, 5/13/2004), NONPRECEDENTIAL OPINION ISSUED March 8, 2004, PRECEDENTIAL OPINION ISSUED May 13, 2004.